

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Denial of the
Family Foster Care License of
Bernice Dixon and Vernell Fields

**RECOMMENDED ORDER GRANTING
THE DEPARTMENT'S MOTION
FOR SUMMARY DISPOSITION**

This matter is pending before Administrative Law Judge Allan W. Klein pursuant to a Notice of and Order for Hearing dated September 24, 2003. On October 16, 2003, the Department of Human Services filed a Motion for Summary Disposition. The Applicants did not submit a response in opposition to the motion. The time to respond to the motion expired on October 27, 2003, without a reply from the Applicants.

Vicki Vial-Taylor, Assistant Hennepin County Attorney, 525 Portland Avenue, Suite 1200, Minneapolis, Minnesota 55415, represents the Department of Human Services ("DHS" or "the Department"). The Applicants, Bernice Dixon and Vernell Fields, 1102 Olson Memorial Highway, Apartment 202, Minneapolis, Minnesota 55411, appear to be proceeding without benefit of counsel.

Based upon all of the files, records and proceedings herein, and for the reasons set forth in the accompanying Memorandum,

IT IS HEREBY RECOMMENDED that the Motion for Summary Disposition filed by the Department of Human Services be GRANTED.

Dated: October 30, 2003.

S/ Allan W. Klein

ALLAN W. KLEIN

Administrative Law Judge

NOTICE

This Order is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Recommended Order of the Administrative Law Judge. Pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Recommended Order has been made available to the parties to the proceeding for at least ten days and an opportunity has been afforded to each party adversely affected to file exceptions and present argument

to the Commissioner. Parties should contact the Office of the Commissioner, Minnesota Department of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155; telephone 651-296-2701, for further information regarding the filing of exceptions and the presentation of argument.

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Recommended Order will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with Minn. Stat. § 14.62, subd. 2a, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the Recommended Order and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

MEMORANDUM

In this contested case proceeding, Bernice Dixon and Vernell Fields have appealed the decision by the Department to deny their application for a family foster care license. The Department has moved for summary disposition on the grounds that there are no material issues of fact in dispute and it is entitled to disposition of this case in its favor as a matter of law. Summary disposition is the administrative equivalent of summary judgment.^[1] Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.^[2] A genuine issue is one that is not a sham or frivolous. A material fact is a fact whose resolution will affect the result or outcome of the case.^[3]

The moving party must demonstrate that no genuine issues of material fact exist.^[4] If the moving party is successful, the nonmoving party then has the burden of proof to show specific facts are in dispute that can affect the outcome of the case.^[5] The existence of a genuine issue of material fact must be established by substantial evidence; general averments are not enough to meet the nonmoving party's burden.^[6] The evidence presented to defeat a summary judgment motion, however, need not be in a form that would be admissible at trial.^[7] The nonmoving party also has the benefit of the most favorable view of the evidence. All doubts and inferences must be resolved against the moving party.^[8]

Factual Background

Based upon the materials submitted by the Department, it appears that the facts in this matter relevant to the Motion for Summary Disposition are as follows. The Applicants submitted to the Department an application for a family foster care license. As part of the licensing process, a background study was conducted with respect to all persons over the age of 13 who were living in the Applicants' household. Based upon the results of the study, Vernell Fields was found to be disqualified from direct contact

with persons served by DHS-licensed programs.^[9] The disqualification was based upon Mr. Fields' conviction for aggravated assault on April 14, 1975.^[10] The disqualification letter stated, "**Failure to request reconsideration will be treated by the Commissioner as acceptance by you of the disqualification.**"^[11] Mr. Fields did not request reconsideration of the disqualification.^[12]

On August 22, 2003, the Applicants were notified that their family foster care license application was denied by the Department due to the disqualification.^[13] The Department's Order of Denial informed the Applicants that they had a right to appeal the denial under Minnesota Statutes Chapter 14.^[14] Bernice Dixon requested an appeal of the denial on September 19, 2003.^[15] The Department issued a Notice of and Order for Hearing in this matter on September 24, 2003.

The Department filed its Motion for Summary Disposition on October 16, 2003. The Applicants did not submit any response to the Department's motion.

Arguments and Analysis

In its motion for summary disposition, the Department maintains that disqualification was required under Minn. Stat. § 245C.14, subd. 1(a), due to the Applicant's assault conviction. The Department cites Minn. Stat. § 245C.29, subd. 2, as rendering the disqualification conclusive where the disqualified person has not requested reconsideration of the disqualification.^[16] The Department thus asserts that there are no genuine issues of material fact that have a bearing on the outcome of this case and the Department is entitled to judgment as a matter of law.

The Department's analysis, that a disqualification for which reconsideration is not requested is not otherwise reviewable, is correct. This approach to disqualifications is supported by Minn. Stat. § 245C.29, subd. 2, which states in pertinent part:

Subd. 2. **Conclusive disqualification determination.** Unless otherwise specified in statute, a determination that:

* * *

2) a preponderance of the evidence shows that the individual committed an act or acts that meet the definition of any of the crimes listed in section 245C.15 ... is conclusive if:

* * *

(ii) the individual did not request reconsideration of the disqualification under section 245C.21

The Applicants' entitlement to a contested case hearing under the circumstances of this matter is conditioned on a request for reconsideration of Mr. Fields' disqualification.^[17] Since Mr. Fields did not request reconsideration, the disqualification is not reviewable here.

Those who are disqualified from contact with persons served in a licensed program (such as family foster care) cannot be granted a license to provide such care.^[18] Since Mr. Fields cannot dispute the disqualification, there is no reason for conducting a contested case proceeding.

There is no genuine issue of material fact remaining for hearing and the Department is entitled to prevail as a matter of law. Accordingly, it is recommended that the Department's order denying the application by Bernice Dixon and Vernell Fields for a family foster care license be affirmed.

A.W.K.

^[1] Minn. R. 1400.5500 (K).

^[2] *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955); *Louwagie v. Witco Chemical Corp.*, 378 N.W.2d 63, 66 (Minn. App. 1985); Minn. R. Civ. P. 56.03; Minn. R. 1400.5500 (K).

^[3] *Illinois Farmers Insurance Co. v. Tapemark Co.*, 273 N.W.2d 630, 634 (Minn. 1978); *Highland Chateaux. Minnesota Department of Public Welfare*, 356 N.W. 2d 804, 808 (Minn. App. 1984).

^[4] *Theile v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

^[5] *Highland Chateau*, 356 N.W.2d at 808; *Hunt v. IBM Mid America Employees*, 384 N.W.2d 853, 855 (Minn. 1986).

^[6] *Id.*; *Murphy v. Country House, Inc.*, 307 Minn. 344, 351-52, 240 N.W.2d 507, 512 (1976); *Carlisle v. City of Minneapolis*, 437 N.W.2d 712, 715 (Minn. App. 1988).

^[7] *Carlisle*, 437 N.W.2d at 715 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986)).

^[8] See *Celotex*, 477 U.S. at 325; *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988); *Greaton v. Enich*, 185 N.W.2d 876, 878 (Minn. 1971); *Dollander v. Rochester State Hospital*, 362 N.W.2d 386, 389 (Minn. App. 1985).

^[9] Stephenson Affidavit, Exhibit 4.

^[10] Stephenson Affidavit, Exhibit 3.

^[11] Stephenson Affidavit, Exhibit 4 (emphasis in original).

^[12] Stephenson Affidavit, at 2.

^[13] Stephenson Affidavit, Exhibit 7.

^[14] *Id.*

^[15] Stephenson Affidavit, Exhibit 8.

^[16] DHS Memorandum, at 3-4.

^[17] See also Minn. Stat. § 245A.08, subd. 2(a) (conditioning contested case challenge to both license denial and disqualification on request for reconsideration).

^[18] See Minn.R. 9543.0100. subp. 3, which states:

Subp. 3 **Revocation or denial of license.** Violations that are grounds for recommending license revocation or denial include, but are not limited to: ... B. a disqualification in Minnesota Statutes, section 245A.04, subdivision 3d, or in rules governing the program